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Mail Stop Petition
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EJ Berresch
Attorney for Applicant

Date: 29 January 2004



PATENT

Attorney Docket No.: DB000974-001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Milton, et al.)
Serial No.: 10/629,887) **Examiner:** Not yet assigned
Filed: 29 July 2003)
) **Art Unit:** 3765
Entitled: ARTICLE DISPENSING AND COUNTING METHOD AND DEVICE

PETITION PURSUANT TO 37 CFR §1.47(b)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

McKesson Automation Systems, Inc. ("McKesson") hereby submits an application for patent pursuant to 37 CFR §1.47(b) on behalf of joint inventor Michael A. Bergeron ("Bergeron"). Bergeron was employed by McKesson and he conceived portions of the subject matter of the above-identified application during the normal course of his duties while employed by McKesson and while employed as a consultant after his normal employment ended. McKesson through its attorneys, Thorp Reed & Armstrong, LLP ("TRA"), has made a *bona fide* attempt to procure Bergeron's cooperation, yet Bergeron has refused to execute the application.

Pertinent Facts

While employed by McKesson, Bergeron had an obligation to assign inventions to his employer, McKesson. During his period of employment with McKesson, Bergeron and several other McKesson

employees began development of a pill singulating mechanism which forms a portion of the subject matter of the above-identified application. Sometime before the above-identified application was filed on 29 July 2003, the employment relationship between McKesson and Bergeron ended. The remaining joint inventors, however, continued to perfect the subject matter covered by the above-identified application.

Additional subject matter incorporated into the above-identified application was believed to be conceived by Bergeron during a period while Bergeron was employed by McKesson as a consultant. This additional subject matter has been assigned by Bergeron to McKesson. (see "Exhibit A").

On 22 December 2003, TRA sent a letter (marked "Exhibit B") to Bergeron by Federal Express. The purpose of the letter was to request Bergeron's assistance in reviewing the application to confirm TRA's conclusion as to Bergeron's inventive contribution and to execute a declaration and an assignment of the application in favor of McKesson.

The letter also forwarded to Bergeron a non-disclosure agreement (marked "Exhibit C"). The non-disclosure agreement was necessary to protect the additional confidential material developed by the remaining joint inventors after Bergeron's employment relationship with McKesson ended and which appears in the above-identified application. The non-disclosure agreement had previously been reviewed by Bergeron, and his requested changes to the agreement had been made. A postage paid return envelope was also provided to Bergeron with the letter of 22 December 2003.

On 9 January 2004, Bergeron responded by letter (marked "Exhibit D") stating that he is "not refusing to join in the aforementioned application". However, he did not execute the requested non-disclosure agreement needed to maintain the confidentiality of subject matter conceived by the other inventors.

Remarks:

Proof of Inventor's Refusal to Join

It is respectfully submitted that Bergeron has an obligation to assign the above-identified patent application to his former employer and that McKesson has made a *bona fide* attempt to procure Bergeron's cooperation in this matter. In a justifiable attempt to protect confidential information, McKesson requested that Bergeron sign a non-disclosure agreement. After some discussions, McKesson drafted a non-disclosure agreement, which included amended terms as specifically requested by Bergeron. Bergeron has refused, however, to agree to maintain the contents of the application confidential until the application is published. It is respectfully submitted that McKesson, through its attorneys TRA, has made a *bona fide* attempt to procure Bergeron's cooperation without success.

Statement of Last Known Address

The inventor's last known address is as follows:

Michael A. Bergeron
4312 Overview Drive
Pineville, LA 71360

Proof of Proprietary Interest

It is respectfully submitted that McKesson has a proprietary interest in the above-identified application. McKesson's proprietary interest in the above-identified application arises from the fact that certain of the subject matter covered by the above-identified application was conceived by Bergeron at a time when Bergeron was employed by McKesson as the head of Research and Development and had an obligation to assign inventions to his employer. Additional subject matter, believed to have been conceived by Bergeron while working as a consultant for McKesson, has been assigned by Bergeron to McKesson (see Exhibit A).

Proof of Irreparable Damage

It is respectfully submitted that a Notice of Missing Parts was issued by the United States Patent and Trademark Office on 29 October 2003. The Notice of Missing Parts established a two-month deadline (with the availability for extensions of time under 37 CFR 1.136(a)) for McKesson to submit the required oath or declaration in compliance with 37 CFR 1.63. McKesson will suffer irreparable harm due to Bergeron's refusal to cooperate because the application will become abandoned if the proper oath is not submitted in response to the Notice of Missing Parts.

For the foregoing reasons, it is respectfully requested that McKesson's petition under 37 CFR § 1.47 be granted.

Respectfully Submitted,



Edward L. Pencoske
Reg. No. 29,688
THORP REED & ARMSTRONG, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425
(412) 394-7789

Dated: 29 January 2004

Attorney for Applicants

Attorney's Docket No. _____

PATENT

For: U.S. and/or Foreign Rights
For: U.S. Application or
 U.S. Provisional Application
For: U.S. Patent
For: PCT Application
By: Inventor(s) or Present Owner

ASSIGNMENT OF INVENTION

In consideration of the payment by ASSIGNEE to ASSIGNOR of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration,

ASSIGNOR:

Inventor(s) or person(s) or entity(ies) who own the invention

Michael A. Bergeron
(type or print name(s) of ASSIGNOR(S))
4312 Overview Drive
Address

Pineville, LA 71360

Citizen of the United States of America
Nationality

(if assignment is by person or entity to whom invention was previously assigned and this was recorded in PTO, add the following)

Recorded on _____ Reel _____
Frame _____

hereby sells, assigns and transfers to

ASSIGNEE:

McKesson Automation Systems, Inc.
(type or print name(s) of ASSIGNEE(S))
4333 Shreveport Hwy.
Address
Pineville, LA 71360

and the successors, assigns and legal representatives of the ASSIGNEE

EXHIBIT

A

(complete one of the following)

the entire right, title and interest
 an undivided _____ percent (_____) % interest for
the United States and its territorial possession

(check the following box, if foreign rights are also to be assigned)

and in all foreign countries, including all rights to claim priority, in and
to any and all improvements which are disclosed in the invention entitled:

Hinged Medicine Bottle Closure

Name of inventor(s) Michael A. Bergeron

(check and complete (a), (b), (c), (d), (e), (f) or (g))

and which is found in

(a) U.S. patent application executed on even date herewith
(b) U.S. patent application executed on _____
(c) U.S. provisional application naming the above inventor(s) for the above
entitled invention. Serial No. 60/428,580
 Express mail label no. EU147303090US
 Mailed: November 22, 2002
(d) To comply with 37 CFR 3.21 for recordal of this assignment, I, an
 ASSIGNOR signing below, hereby authorize and request my attorney to
 insert below the filing date and application number when they become
 known.
(e) U.S. application no. _____
(f) International application no. _____
(g) U.S. patent no. _____ issued

 A change of address to which correspondence is to be sent
 regarding patent maintenance fees is being sent separately.

(also check (g), if foreign application(s) is also being assigned)

(g) and any legal equivalent thereof in a foreign country, including the right
 to claim priority

and, in and to, all Letters Patent to be obtained for said invention by the above application or any continuation, division, renewal, or substitute thereof, and as to letters patent any reissue or re-examination thereof

ASSIGNOR hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment;

ASSIGNOR further covenants that ASSIGNEE will, upon its request, be provided promptly with all pertinent facts and documents relating to said invention and said Letters Patent and legal equivalents as may be known and accessible to ASSIGNOR and will testify as to the same in any interference, litigation or proceeding related thereto and will promptly execute and deliver to ASSIGNEE or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letter Patent and said equivalents thereof which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS WHEREOF, I/We have hereunto set hand and seal this 19
day of February 2003.

Date of Signing

WARNING: *The date of signing must be the same as the date of execution of the application, if item (a) was checked above.*

Date:



Signature of ASSIGNOR

(if ASSIGNOR is a legal entity, complete the following information)

(type or print the name of the above person authorized to sign on behalf of ASSIGNOR)

Title

Notary for the State of Louisiana, Parish of Rapides



This 19th day of February 2003

Karl N. Campbell
Commission expires upon death

From: THORP REED & ARMSTRONG, LLP (412)394-7711
EMERGING BUSINESS & TECHNOLOGY
301 GRANT STREET, 14TH FLOOR
ONE OXFORD CENTRE
PITTSBURGH, PA, 15219



FedEx.

To: Michael A. Bergeron (412)394-7789

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4312 Overview Drive

Pineville, LA, 71360

Ref: 016055.084229



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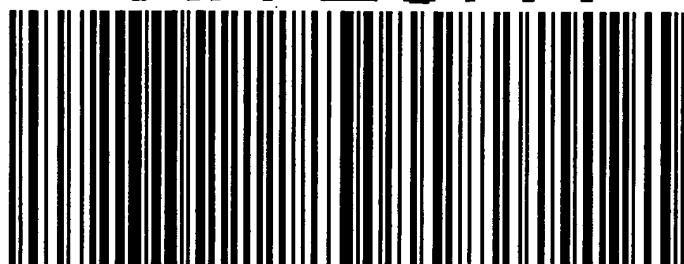
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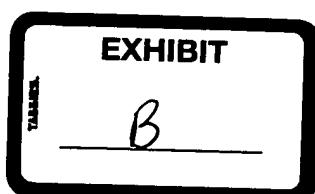
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Recipient's Name **THORP REED & ARMSTRONG**

4b **4312 Overview Drive**

Open/Pickup/Return

Address **1 OXFORD CENTER 300 GRANT ST**

Open/Pickup/Return

5 To **Edward Penecak** Phone **(412) 394-1779**

Recipient's Name **THORP REED & ARMSTRONG**

6 To **Edward Penecak** Phone **(412) 394-1779**

Recipient's Name **THORP REED & ARMSTRONG**

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447

ATTORNEYS AT LAW SINCE 1895

VIA FEDERAL EXPRESS

Michael A. Bergeron
4312 Overview Drive
Pineville, LA 71360

December 22, 2003

Re: Our File No. DB000974-001 (016055.084229)
McKesson APS Patent Prosecution

Dear Mr. Bergeron:

McKesson has filed a patent application entitled Article Dispensing and Counting Method and Device (Shutterpuck). As a result of my discussions with you and various McKesson employees, you have been identified as an inventor based on work performed by you prior to your leaving McKesson. McKesson would like for you to review this patent application to confirm our conclusion as to your inventive contribution and to execute a declaration and an assignment of the invention in favor of McKesson.

Because the patent application contains material contributed by other inventors as well as work performed after your departure, before forwarding a copy of the application to you, we wish to have the enclosed non-disclosure agreement (NDA) signed and returned to me in the enclosed envelop. The NDA has been modified to include the changes that you have requested. After I receive the executed NDA, I will forward to you the application, declaration, and assignment.

I look forward to receiving the executed NDA by 9 January 2004. A self-addressed, return Federal Express envelope is enclosed for your convenience. If I do not receive the executed NDA by 9 January 2004, I will assume that you do not wish to cooperate with McKesson in reviewing the application and executing the declaration and assignment.

Pittsburgh

Philadelphia

Princeton

Wheeling

Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425
412 394 7711
412 394 2555 Fax



Michael Bergeron
Page 2

December 22, 2003

Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Edward L. Pencoske".

Edward L. Pencoske

ELP/nwf
Enclosures (NDA and Return Fed. Ex. Env.)

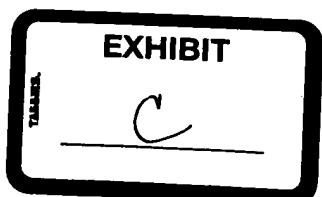
NONDISCLOSURE AGREEMENT

This Agreement, dated as of this ____ day of _____, 2003, is between MCKESSON AUTOMATION SYSTEMS INC. ("McKesson") and MIKE BERGERON ("Consultant"), a consultant for McKesson.

WHEREAS, McKesson desires to disclose certain information to Consultant in his capacity as a consultant for McKesson, which information is of a proprietary and confidential nature, for the purpose of permitting Consultant to review certain McKesson patent applications and related activities (the "Services");

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants set forth herein, the parties agree as follows:

1. As used in this Agreement, the term "**Confidential Information**" shall mean all information disclosed by McKesson to Consultant in connection with the Services, including, but not limited to, any information about prototype products, beta products, or any other products not commercially available such as information concerning construction, operation, or workflow.
2. Confidential Information does not include information that: (i) is approved for release by the written authorization of McKesson; (ii) is or becomes publicly available by other than unauthorized disclosure by Consultant; or (iii) is received by Consultant from a third party who is rightfully in possession of such information free of any obligation to maintain its confidentiality.
3. Consultant agrees that, except as required by judicial order or governmental laws or regulations, Consultant shall use the Confidential Information solely for the purpose of performing the Services. Consultant agrees to hold the Confidential Information in strict confidence. Consultant shall not, in whole or in part or in any manner or form, assign, subcontract, or otherwise transfer the Confidential Information or Consultant's right to evaluate or work on the Confidential Information to any other party without the express prior written permission of McKesson.
4. If Consultant, or anyone to whom Consultant transmits the Confidential Information, becomes legally obligated (by oral questions, interrogations, requests for information or documents, subpoena, investigative demand or similar process) to disclose any of the Confidential Information, Consultant shall use his best efforts to provide McKesson with prompt written notice so that McKesson may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained, or if McKesson waives compliance with the provisions of this Agreement, Consultant will furnish only that portion of the Confidential Information which he is legally required to disclose and will exercise his best efforts to obtain reliable assurance, to the extent that such assurance can be obtained, that confidential treatment will be accorded the Confidential Information.
5. Upon termination of the Services, or at any time upon McKesson's written request, Consultant shall promptly return to McKesson any and all Confidential Information in Consultant's possession, including all copies thereof or extracts therefrom held by Consultant, except for documentation directly related to any patent application on which the Consultant is or should be listed as an Inventor, copies of which Consultant may retain but shall remain Confidential Information subject to the restrictions set forth herein.
6. This Agreement sets forth all of the promises, agreements, conditions and understandings between the parties respecting the subject matter hereof and supersedes all negotiations, conversations, discussions



and agreements between the parties concerning such subject matter. This Agreement may not be amended, changed, modified or altered, except in writing signed by both parties.

7. This Agreement shall be governed by the laws of the State of California without regard to its rules regarding conflicts of law.

McKESSON AUTOMATION SYSTEMS INC.

MIKE BERGERON

By: _____

By: _____

Name: _____

Date: _____

Title: _____

Date: _____

January 9, 2004

Edward Pencoske
Thorp Reed & Armstrong, LLP
One Oxford Centre
301 Grant Street, 14th Floor
Pittsburgh, PA 15219-1425

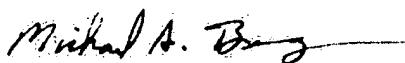
Dear Mr. Pencoske:

I do not consider delivery of the non-disclosure agreement for signature a bona fide attempt to deliver the 'Article Dispensing and Counting Method and Device (Shutterpuck)' application for my review.

In order to participate in the patent application, please forward a copy to my attention for review prior to execution of an Oath or Declaration.

While you may feel the application papers contain proprietary information, I am not refusing to join in the aforementioned application as defined by 37 CFR §1.47.

Sincerely,



Michael A. Bergeron
4312 Overview Drive
Pineville, LA 71360
(318) 640-6905





PATENT

Attorney Docket No.: DB000974-001

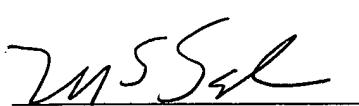
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Milton)
Serial No.: 10/629,887) **Examiner:** Not yet assigned
Filed: 29 July 2003) **Art Unit:** 3765
Entitled: ARTICLE DISPENSING AND COUNTING METHOD AND DEVICE

ADDENDUM -- Properly Empowered Representative of the Rule 1.47 Applicant

Name: Mark Sakaniwa
Residence:
City: Pittsburgh
State: Pennsylvania
Country: USA
Citizenship: USA

Mailing Address: McKesson Automation Systems, Inc.
700 Waterfront Drive
Pittsburgh, PA 15222


Mark Sakaniwa (Signature)
President
McKesson Automation Systems, Inc.

January 26, 2004

(Date)